IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6335 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

FULIBEN NANUBHAI BAMBHROLIYA

Versus

STATE OF GUJARAT

Appearance:

SHRI ND NANAVATY, SENIOR ADVOCATE FOR
NANAVATY ADVOCATES for Petitioner No. 1-7
SHRI NAGESH SOOD, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 02/08/2004

ORAL JUDGEMENT

Rule. Shri Nagesh Sood, Learned AGP waives service of rule on behalf of the respondents. With the consent of the parties, the matter is taken up for final hearing today.

2. In this Special Civil Application under Article 226 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the Collector, Amreli dated 17.5.2004 in directing the

petitioners to pay an amount of Rs.1,66,42,850/- by way of balance amount of premium fixing the market price of the land in question at Rs.600/- per sq.mtr..

3. Few facts are necessary for the purpose of determination of the present Special Civil Application.

3.1. The petitioners are purchasers of agricultural land bearing S.No.25 of Amreli admeasuring 23 acres and 11 gunthas. They submitted an application dated 20.11.1992 to the respondent no.2 - Collector, Amreli to convert 5 acres of land into nonagricultural use and sought for nonagricultural use permission. Subsequently, it was requested to grant nonagricultural use permission for 11 acres and 30 gunthas of land instead of 5 acres of land and that request was made in the year 1995. By order dated 17.1.1995, while allowing the application of the petition and granting nonagricultural use permission, the Collector fixed the premium considering the market price of the land in question at Rs.312/- per sq.mtr. As the said fixation was found to be excessive, the petitioners challenged the said order qua fixation of premium on the basis of market price by filing revision application before the Gujarat Revenue Tribunal being Revision No. TEN.B.R./4/1995. By judgment and order dated 20.4.1998, the Gujarat Revenue Tribunal allowed the said revision application quashing and setting aside the order passed by the Collector, Amreli dated 17.1.1995 so far it relates to premium on the basis of market price at Rs.312/- per sq.mtr. and remanded the matter to the Collector, Amreli for deciding the amount of premium.

3.2. It is the case of the petitioners that thereafter, on remand and considering the valuation fixed by the District Land Valuation Committee as well as the Deputy Town Planner, the Collector by order dated 13.7.1998 fixed the premium considering the market price at the rate of Rs.100/- per sq.mtr. That order came to be passed on 13.7.1998 and accordingly, the petitioners deposited an amount of Rs.33,28,570/- on 5.8.1998. It seems that on deposit of the said amount, a further consequential order is also passed on 10.8.1998.

3.3. It seems that one Dhirubhai Basiya, a resident of Amreli filed a Public Interest Litigation being SCA No. 7799 of 1998 challenging the aforesaid orders i.e. 13.7.1998 and 10.8.1998 by which the Collector, Amreli passed an order fixing the premium considering the market price of the land in question at Rs.100/- per sq.mtr. During the pendency of the aforesaid Special Civil Application, by order dated 9.10.1998, the respondent

no.2 - Collector, Amreli revoked the orders dated 13.7.1998 and 10.8.1998 exercising the powers under Section 21 of the General Clauses Act and accordingly, the aforesaid Special Civil Application No. 7799 of 1998 came to be disposed of.

3.4. Being aggrieved and dissatisfied with the order passed by the Collector, Amreli dated 9.10.1998 in revoking the orders dated 13.7.1998 and 10.8.1998 by which the premium with regard to the land in question was fixed considering the market price at Rs.100/- per sq.mtr. Special Civil Application No.10221 of 1998 was preferred by the petitioners which came up for hearing before this Court (Coram: A.R.Dave, J) and this Court by judgement and order dated 23.12.1999 allowed the aforesaid Special Civil Application quashing and setting aside the order dated 9.10.1998 reserving liberty to the respondent to pass a fresh order after hearing the petitioners and other concerned persons who might have raised objections against the orders dated 13.7.1998 and 10.8.1998. Thus, by quashing and setting aside the order dated 9.10.1998 and reserving liberty to the respondents to pass a fresh order, what was required to be done by the Collector was to give an opportunity of hearing to the petitioners to show cause why the earlier orders dated 13.7.1998 and 10.8.1998 should not be revoked. It seems that instead of giving an opportunity to the petitioners to show cause why the earlier orders dated 13.7.1998 and 10.8.1998 be not revoked, the Collector, Amreli passed an order dated 17.5.2004 and the petitioners were directed to pay an amount of Rs.1,66,42,850/- by fixing the premium considering the market price of the land in question at Rs.600/- per sq.mtr. i.e. valuation fixed by the State Valuation Committee as on 7.2.2004 and fixing the premium at Rs.1,99,71,420/- and deducting Rs.33,28,570/-, the petitioners were directed to deposit the balance amount which comes to Rs.1,66,42,850/-. The said communication/order dated 17.5.2004 is the subject matter of the present Special Civil Application under Article 226 of the Constitution of India.

4. Shri Nirupam D Nanavaty, Learned Senior Counsel appearing for the petitioners has vehemently submitted that in fact, the Collector, Amreli has not complied with the directions issued by this court in Special Civil Application No.10221 of 1998 vide judgment and order dated 23.12.1999 and till date, no opportunity is given to the petitioners to show cause why the orders dated 13.7.1998 and 10.8.199 should not be revoked. He has further submitted that in fact, they have deposited the

amount of premium on the basis of the orders passed by the Collector dated 13.7.1998 and 10.8.1998. On quashing and setting aside of the order dated 9.10.1998, the earlier orders dated 13.7.1998 and 10.8.1998 would be restored and unless and until those orders are set aside and/or revoked, no fresh orders could have been passed by the State Government. In the present case, without revoking the earlier orders dated 13.7.1998 and 10.8.1998, a fresh order came to be passed by the Collector fixing the premium considering the market price at the rate of Rs.600/- per sq.mtr. which is contrary to the order passed by this Court in Special Civil Application No.10221 of 1998.

Shri Nanavaty, Learned Sr. Counsel appearing for the petitioners has further submitted that even the fixing of the premium considering the market price at the rate of Rs.600/- per sq.mtr. done by the State Valuation Committee dated 7.2.2004 is itself bad in law and illegal as their applications were of the year 1992 and the valuation which is fixed by the respondents is considering the market price as on 7.2.2004. This is contrary to the law laid down by this Court in catena of judgements. Be that as it may be, at present, this Court is not concerned or required to pass an order as this Court proposes to quash and set aside the order of the Collector, Amreli dated 17.2.2004 on the ground that the same is passed without giving any opportunity to the petitioners and also the direction issued by this Court in SCA No.10221 of 1998 vide judgment and order dated 23.12.1999 is not complied with, in as much as, as on today, the orders dated 13.7.1998 and 10.8.1998 are not revoked and are still in existence. By virtue of the order passed by this Court in aforesaid Special Civil Application No.10221 of 1998, what was required to be done by the Collector was to give an opportunity to the petitioners to show cause at the first instance why the aforesaid orders dated 13.7.1998 and 10.8.1998 should not be revoked. On revocation of the said orders, the Collector was required to fix the valuation and fix the premium on the basis of market price. Unless and until those orders are revoked, the Collector could not have passed any further order with regard to the fixation of the premium. Under the circumstances, the order dated 17.5.2004 passed by the Collector, Amreli is required to be quashed and set aside and is accordingly quashed and set aside. It will be open for the Collector to pass an appropriate order in accordance with law and to comply with the order passed by this Court in aforesaid SCA No.10221 of 1998, meaning thereby, the petitioners are required to be given an opportunity by issuing show cause

notice as to why the earlier orders dated 13.7.1998 and 10.8.1998 should not be revoked and after giving an opportunity, if ultimately, it is found by the Collector that those orders are required to be revoked then he is required to fix the premium on the basis of the market price after giving an opportunity of being heard to the petitioners. If ultimately, on hearing the petitioners, if it is found by the Collector that the aforesaid two orders dated 13.7.1998 and 10.8.1998 are required to be revoked then it will be open for the petitioners to point out to the Collector the correct position with regard to fixation of the market price and point out the judgment of this Court with regard to fixation of premium. Even for the purpose of fixation of market price and premium, the petitioners are required to be given an opportunity of being heard. For that purpose, the petitioners may submit a detailed representation pointing out the correct position of law with regard to fixation of market price. As and when such representation is made, the respondent is directed to consider the same and follow the judgment of this Court. For the reasons stated above, the impugned order dated 17.5.2004 is hereby quashed and set aside. The matter is now remanded to the Collector, Amreli for passing a fresh order after considering the aforesaid observations and findings. This petition is allowed. Rule is made absolute with no order as to costs.

(M.R.Shah, J)
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